

## NOTICE OF VIOLATION

### California Safe Drinking Water and Toxic Enforcement Act

Re: Chromium (hexavalent compounds) Exposures from TXI Riverside Cement

May 1, 2008

This Notice of Violation is provided to you pursuant to and in compliance with California Health and Safety Code Section 25249.7(d).

- For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, see the attached summary provided by the California EPA (copies not provided to public enforcement agencies).
- This Notice of Violation is provided by the Center for Environmental Health ("CEH"), 528 61<sup>st</sup> Street, Suite A, Oakland, CA 94609, (510) 594-9864. CEH is a nonprofit corporation dedicated to protecting the environment, improving human health and supporting environmentally sound practices. Michael Green is the Executive Director of and a responsible individual within CEH.

#### Description of Violation:

- Violator: The name of the violator is: TXI Riverside, Inc. ("Riverside Cement"). Riverside Cement is located at 1500 Rubidoux Blvd., Riverside, CA 92509.
- Time Period of Exposure: The violations have been occurring since at least April 28, 2005 and are continuing to this day.
- Provision of Proposition 65: This Notice of Violation covers the "warning provision" of Proposition 65, which is found at California Health and Safety Code Section 25249.6.
- Chemical(s) Involved: The name of the listed chemical involved in these violations is chromium (hexavalent compounds) ("Chromium"). Exposure to Chromium occurs as a result of emissions from Riverside Cement's facility located at 1500 Rubidoux Blvd., Riverside, CA (the "Facility").
- Type of Exposure: This notice addresses environmental exposures to Chromium. Riverside Cement emits, discharges and/or releases hexavalent chromium into the environment from the Facility. Residents within the radius described below are exposed to Chromium via inhalation, when they breathe the dust emitted, discharged and/or otherwise released by the Facility, and via ingestion, when such residents swallow the dust directly or indirectly through hand to mouth contact. Residents are also exposed via dermal absorption directly through the skin when the residents touch or otherwise come into contact with the dust emitted, discharged and/or otherwise released by the Facility. No clear and reasonable warning is provided regarding the carcinogenicity of Chromium emitted, discharged and/or released by the Facility.

- Location of Exposure: Individuals located within a 50 mile radius of the Facility are exposed to elevated levels of Chromium that are emitted, discharged or otherwise released by the Facility.

**Resolution of Noticed Claims:**

- Based on the allegations set forth in this Notice, CEH intends to file a citizen enforcement lawsuit against the alleged violator unless such violator enters into a binding written agreement to: (1) remove the Chromium from the neighborhood surrounding the Facility; (2) provide clear and reasonable warnings to all residents who live within the vicinity of the Facility; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b). If the alleged violator is interested in resolving this dispute without resort to expensive and time-consuming litigation, please feel free to contact CEH through its counsel identified below. It should be noted that CEH cannot: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received CEH's 60-day Notice. Therefore, while reaching an agreement with CEH will resolve its claims, such agreement may not satisfy the public prosecutors.

Please direct any inquiries regarding this notice to CEH and its counsel Mark N. Todzo at Lexington Law Group, LLP, 1627 Irving Street, San Francisco, CA 94122, (415) 759-4111.

**CERTIFICATE OF MERIT**

**Health & Safety Code §25249.7(d)**

I, Mark N. Todzo, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the party identified in the notice has violated Health & Safety Code §25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney with the Lexington Law Group, LLP, and I represent the noticing party, the Center for Environmental Health ("CEH").

3. Members of my firm and I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies or other data regarding the exposures to the listed chemical that is the subject of the action.

4. Based on the information obtained through those consultations, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of the Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code §25249.7(h)(2), *i.e.*: (1) the identity of the persons consulted with and relied on by the certifier; and (2) the facts, studies or other data reviewed by those persons.

May 1, 2008



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Mark N. Todzo  
Attorney for CENTER FOR  
ENVIRONMENTAL HEALTH

## PROOF OF SERVICE BY MAIL

I declare that:

I am employed in San Francisco County, California. I am over the age of 18 years and not a party to the within cause; my business address is 1627 Irving Street, San Francisco, California 94122.

On May 1, 2008, I served true copies of the following documents:

**NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER  
AND TOXIC ENFORCEMENT ACT;**

**CERTIFICATE OF MERIT;** and

**THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF  
1986 (PROPOSITION 65): A SUMMARY** (only sent to those on service list  
marked with an asterisks).

I placed a true copy of this paper in an envelope addressed to:

*See Attached Service List.*

I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service, to wit, that correspondence will be deposited with the United States Postal Service this same day in the ordinary course of business. I placed the envelope containing the above-mentioned documents for collection and mailing on May 1, 2008, following the ordinary business practice.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on May 1, 2008, at San Francisco, California.

Signed:

  
Lindsay Fleece

## SERVICE LIST

District Attorney of Riverside County  
4075 Main Street  
Riverside, CA 92501

California Attorney General's Office  
Attention: Proposition 65 Coordinator  
1515 Clay Street, Suite 2000  
P.O. Box 70550  
Oakland, CA 94612

President  
TXI Riverside Cement  
1500 Rubidoux Blvd.  
Riverside, CA 92509

President  
TXI Corporate Offices  
1341 West Mockingbird Lane  
Dallas, Texas 75247